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Legislative

I

97TH CONGRESS
1ST SESSION

H. R. 131

To amend the National Security Act of 1947 to establish by law procedures for the classification and protection of sensitive information relating to the national security, to provide criminal penalties for unauthorized disclosure of such information, to limit matters that may be classified and impose penalties for unauthorized classification, to provide for declassification, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1981

Mr. BENNETT introduced the following bill; which was referred jointly to the Committee on Armed Services and the Permanent Select Committee on Intelligence

A BILL

To amend the National Security Act of 1947 to establish by law procedures for the classification and protection of sensitive information relating to the national security, to provide criminal penalties for unauthorized disclosure of such information, to limit matters that may be classified and impose penalties for unauthorized classification, to provide for declassification, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 That (a) the National Security Act of 1947 is amended by
2 adding at the end thereof the following new title:

3 "TITLE V—CLASSIFICATION AND SAFEGUARD-
4 ING OF NATIONAL SECURITY INFORMATION

5 "PURPOSE

6 "SEC. 501. The purpose of this title is to establish pro-
7 cedures for the protection against unauthorized disclosure of
8 information and material relating to the national security that
9 is of such a nature that the unauthorized disclosure of such
10 information or material could cause identifiable damage to
11 the national security and to provide criminal penalties for the
12 unauthorized disclosure of such information and material.

13 "AUTHORITY FOR CLASSIFICATION OF NATIONAL
14 SECURITY INFORMATION

15 "SEC. 502. (a) Except as provided in the Atomic
16 Energy Act of 1954, national security information may be
17 designated and protected against unauthorized disclosure
18 only in accordance with this title. The authority to originate
19 the classification of national security information may be ex-
20 ercised only by an official designated under section 503 to
21 have such authority and shall be exercised in accordance with
22 the provisions of section 504.

23 "(b) There shall be three categories of classification by
24 which national security information may be designated, and,
25 except as otherwise expressly provided by law, no other cate-

1 gory or degree of classification shall be used to identify or
2 protect national security information. The three categories of
3 classification shall be known as Top Secret, Secret, and Con-
4 fidential. National security information shall be designated by
5 these categories as follows:

6 “(1) The classification ‘Top Secret’ shall be ap-
7 plied to that national security information the unau-
8 thorized disclosure of which reasonably could be ex-
9 pected to cause exceptionally grave damage to the na-
10 tional security.

11 “(2) The classification ‘Secret’ shall be applied to
12 that national security information the unauthorized dis-
13 closure of which reasonably could be expected to cause
14 serious damage to the national security.

15 “(3) The classification ‘Confidential’ shall be ap-
16 plied to that national security information the unau-
17 thorized disclosure of which reasonably could be ex-
18 pected to cause identifiable damage to the national
19 security.

20 “OFFICIALS WITH AUTHORITY TO CLASSIFY NATIONAL
21 SECURITY INFORMATION

22 “SEC. 503. (a)(1) The authority to originate the classifi-
23 cation of national security information as ‘Top Secret’ may
24 be exercised only by the President, by the heads of such
25 agencies, and by such officials in the Executive Office of the

1 President, as the President may designate by publication in
2 the Federal Register to have such authority, and by such
3 officials as may be designated to have such authority in ac-
4 cordance with subsection (b)(1).

5 “(2) The authority to originate the classification of na-
6 tional security information as ‘Secret’ may be exercised only
7 by officials who have authority to originate the classification
8 of information as ‘Top Secret’, by such other officials in the
9 executive branch of the Government as the President may
10 designate by publication in the Federal Register to have such
11 authority, and by such officials as may be designated to have
12 such authority in accordance with subsection (b)(2).

13 “(3) The authority to originate the classification of na-
14 tional security information as ‘Confidential’ may be exercised
15 only by officials who have authority to originate the classifi-
16 cation of information as ‘Secret’, by such other officials in the
17 executive branch of the Government as the President may
18 designate by publication in the Federal Register to have such
19 authority, and by such officials as may be designated to have
20 such authority in accordance with subsection (b)(3).

21 “(b)(1) Any principal subordinate official of an official
22 designated by the President under subsection (a)(1) to have
23 authority to originate the classification of information as ‘Top
24 Secret’ may be designated by such official to have such au-
25 thority, if such subordinate official has a frequent need to

1 exercise such authority, as determined by the President or by
2 the official making the designation.

3 “(2) Any subordinate official of an official who (A) has
4 authority to designate information as ‘Top Secret’, or (B) is
5 designated by the President under subsection (a)(2) to have
6 authority to designate information as ‘Secret’ may be desig-
7 nated by such official to have such authority if such subordi-
8 nate official has a frequent need to exercise such authority, as
9 determined by the President, by the head of such official’s
10 agency, or by the official making the designation.

11 “(3) Any subordinate official of an official who (A) has
12 authority to designate information as ‘Secret’, or (B) is desig-
13 nated by the President under subsection (a)(3) to have
14 authority to designate information as ‘Confidential’ may be
15 designated by such official to have such authority if such sub-
16 ordinate official has a frequent need to exercise such authori-
17 ty, as determined by the President, by the head of such offi-
18 cial’s agency, or by some other official having authority to
19 originate the classification of information as ‘Top Secret’.

20 “(4) Each designation under this subsection of an official
21 to have authority to originate the classification of information
22 shall be made in writing and shall state the name or position
23 of the official being designated to exercise such authority.

24 “(c) It is the policy of the Congress that the number of
25 designations under subsection (b) of subordinate officials to

1 have authority to originate the classification of information
2 should be kept to the smallest number practicable. To carry
3 out this policy, periodic reviews of such designations shall be
4 made to determine whether officials so designated have a
5 continuing need to exercise such authority.

6 “(d) The President shall prescribe regulations to provide
7 procedures for the handling and classification of national se-
8 curity information that is originated by an agency that does
9 not have an official with authority to classify such
10 information.

11 “STANDARDS FOR CLASSIFICATION

12 “SEC. 504. (a) Information may not be classified unless
13 unauthorized disclosure of such information reasonably could
14 be expected to cause at least identifiable damage to the na-
15 tional security and unless such information concerns—

16 “(1) military plans, weapons, or operations;

17 “(2) information that is furnished to the United
18 States by a foreign government or international organi-
19 zation and that has been designated by such foreign
20 government or international organization as requiring
21 protection against unauthorized disclosure;

22 “(3) intelligence activities, sources, or methods;

23 “(4) the foreign relations or foreign activities of
24 the United States;

1 “(5) scientific, technological, or economic matters
2 relating to the national security;

3 “(6) programs of the United States Government
4 for safeguarding nuclear materials or facilities; or

5 “(7) some other category of information related to
6 the national security and requiring protection against
7 unauthorized disclosure, as determined by the Presi-
8 dent, by an official designated by the President under
9 section 503(a)(1), or by an official who is the head of
10 an agency.

11 “(b) The unauthorized disclosure of information de-
12 scribed in subsection (a)(2) or of information revealing the
13 identity of a confidential foreign intelligence source may be
14 presumed to cause at least identifiable damage to the national
15 security.

16 “(c)(1) Information may not be classified in order to con-
17 ceal violations of law, incompetence, inefficiency, wrongdo-
18 ing, or administrative error, to avoid embarrassment to any
19 person or agency, to restrain competition or independent ini-
20 tiative, or to prevent for any other reason the release of infor-
21 mation that does not require protection in the interest of na-
22 tional security. Any official who classifies information in vio-
23 lation of this subsection shall be subject to such administra-
24 tive disciplinary action, including suspension, as may be or-
25 dered by such official's superiors.

1 “(2) Basic scientific research information not clearly re-
2 lated to the national security may not be classified.

3 “(3) Material containing a reference to classified infor-
4 mation which reference does not itself reveal classified infor-
5 mation may not be classified by reason of such reference or
6 be used as a basis for classification.

7 “(d) Whenever there is reasonable doubt as to which
8 category of classification should be applied, the less restric-
9 tive category should be used. Whenever there is reasonable
10 doubt as to whether information should be classified at all,
11 the information should not be classified.

12 “IDENTIFICATION OF CLASSIFIED MATERIAL

13 “SEC. 505. (a) Each item of classified material shall
14 show on its face—

15 “(1) the category of classification of such material;

16 “(2) the identity of the official authorizing the
17 original classification of such material;

18 “(3) the office which originated the classification
19 of such material;

20 “(4) the dates of the preparation and of the classi-
21 fication of such material; and

22 “(5) whether such material is subject to declassifi-
23 cation at a particular time and, if so, when.

24 “(b) There shall be clearly indicated on the face of each
25 item of classified material or by other appropriate means

1 which portions of such material are classified and which por-
2 tions are not classified, together with the degree of classifica-
3 tion of those portions which are classified. The President may
4 waive the requirements of the preceding sentence for speci-
5 fied classes of material.

6 “(c) Information that is furnished to the United States
7 by a foreign government or international organization and
8 that has been designated by such foreign government or in-
9 ternational organization as requiring protection against unau-
10 thorized disclosure shall either retain its original designation
11 or be assigned a category of classification under this title, and
12 in either case shall be assured a degree of protection equiva-
13 lent to that required by the foreign government or interna-
14 tional organization furnishing such information.

15 “(d) A holder of classified information shall observe and
16 respect the classification assigned to such information by the
17 originator of such classification. If a holder of classified infor-
18 mation believes that such information should not be classi-
19 fied, that the classification which has been assigned to such
20 information is improper, or that such information is subject to
21 declassification under applicable regulations, such holder
22 shall so inform the originator of the classification of such in-
23 formation, who shall promptly reexamine such classification.

1 "DECLASSIFICATION POLICY AND REGULATIONS

2 "SEC. 506. (a) It is the policy of the Congress that de-
3 classification of classified information shall be given emphasis
4 comparable to that accorded classification of national security
5 information. Information classified under this title or under a
6 prior Executive order authorizing the classification of nation-
7 al security information shall be declassified as early as con-
8 siderations of national security allow.

9 "(b) The President shall prescribe regulations to estab-
10 lish procedures for the systematic and periodic review of all
11 classified information for the purpose of downgrading the
12 classification of such information, or of declassifying, trans-
13 ferring, retiring, or destroying such information, as may be
14 appropriate in each case, at the earliest practicable date. In
15 determining whether information should be declassified, the
16 public interest in disclosure of the information shall be con-
17 sidered and weighed against the need for continued classifica-
18 tion of the information.

19 "IMPLEMENTING REGULATIONS

20 "SEC. 507. (a) The President shall prescribe regulations
21 to carry out this title. Such regulations shall include provi-
22 sions to ensure that—

23 "(1) any person given access to classified informa-
24 tion (A) has been determined to be trustworthy, and

1 (B) requires access to such information in the perform-
2 ance of official duties;

3 “(2) all classified material is appropriately and
4 conspicuously marked so as to put any person coming
5 in contact with such material on clear notice that the
6 contents of such material are classified;

7 “(3) classified information is used, possessed,
8 stored, reproduced, and transmitted only under condi-
9 tions that will prevent access to such information by
10 persons not specifically authorized to have such access
11 and that will prevent dissemination of such information
12 to persons not specifically authorized to receive it;

13 “(4) classified information disseminated outside
14 the executive branch is given protection equivalent to
15 that afforded within the executive branch;

16 “(5) appropriate records to assure accountability
17 for all classified information are established and main-
18 tained and that classified information is adequately pro-
19 tected during all transmissions of such information; and

20 “(6) classified information no longer needed in
21 current working files or for reference or record pur-
22 poses is destroyed or otherwise disposed of in accord-
23 ance with chapter 33 of title 44, United States Code
24 (relating to disposal of records).

6 "MATERIAL COVERED BY THE ATOMIC ENERGY ACT OF

8 “SEC. 508. Nothing in this title shall supersede any re-
9 quirement made by or under the Atomic Energy Act of 1954.
10 Material designated as ‘Restricted Data’ and material desig-
11 nated as ‘Formerly Restricted Data’ shall be handled, pro-
12 tected, classified, downgraded, and declassified in conformity
13 with the provisions of the Atomic Energy Act of 1954.

16 “SEC. 509. (a) Any individual who knowingly communi-
17 cates classified information which that individual knows or
18 has reason to know is classified information to a foreign gov-
19 ernment or foreign organization or to any officer or agent
20 thereof not authorized to receive such information shall be
21 imprisoned for any term of years or for life.

H.R. 131—ih

1 United States Government, or an employee of a contractor of
2 the United States Government, and is or has been in posses-
3 sion or control of classified information in the course of that
4 relationship, knowingly communicates such information to a
5 person not authorized to receive it shall be fined not more
6 than \$10,000 or imprisoned not more than ten years, or both.

7 “(c) Any individual who knowingly communicates clas-
8 sified information which that individual knows or has reason
9 to know is classified information to a person not authorized to
10 receive it shall be fined not more than \$5,000 or imprisoned
11 not more than one year, or both. Nothing in this subsection
12 shall be construed to infringe rights or liberties guaranteed
13 under the Constitution or laws of the United States.

14 “(d) It is a defense to a prosecution under subsection (b)
15 or (c) that—

16 “(1) before the commission of the offense with
17 which the defendant is charged, the information com-
18 municated had been publicly disclosed;

19 “(2) the information communicated was not law-
20 fully classified at the time of the offense with which
21 the defendant is charged; or

22 “(3) the information communicated was communi-
23 cated only to a regularly constituted subcommittee,
24 committee, or joint committee of Congress, pursuant to
25 lawful demand.

1 “(e) In making a determination as to whether the infor-
2 mation communicated was lawfully classified at the time of
3 the offense with which the defendant is charged, the court
4 shall determine the matter and shall examine such informa-
5 tion in camera. In any such determination, the burden is on
6 the United States to sustain the classification of such infor-
7 mation. After any in camera examination under this subsec-
8 tion, the court shall enter into the record its findings and
9 determinations with respect to whether the information com-
10 municated was lawfully classified at the time of the offense
11 with which the defendant is charged. Any determination by
12 the court under this subsection shall be a question of law.

13 “(f)(1) Whenever any person is about to engage in con-
14 duct that would constitute a violation of this section, the At-
15 torney General, on behalf of the United States, may apply to
16 the appropriate court for an order enjoining such conduct,
17 and upon a showing that a person is about to engage in such
18 conduct, a permanent or temporary injunction, temporary re-
19 straining order, or other order may be granted.

20 “(2) In making a determination as to whether a viola-
21 tion of this section is about to occur, the court shall examine
22 the information that is the subject of the possible violation
23 and shall not grant relief under this subsection if the informa-
24 tion is not lawfully classified. Examination of the contents of
25 such information shall be conducted in camera. In any such

1 determination, the burden is on the United States to sustain
2 the classification of such information. After an in camera ex-
3 amination under this subsection, the court shall enter into the
4 record its findings and determinations with respect to wheth-
5 er the information is lawfully classified.

6 “(g) For the purposes of this section:

7 “(1) The term ‘classified information’ means infor-
8 mation that is designated as information that—

9 “(A) has been classified under this title;

10 “(B) was classified before the effective date
11 of this title under an Executive order; or

12 “(C) was furnished to the United States by a
13 foreign government or international organization
14 and was designated by such foreign government
15 or international organization as requiring protec-
16 tion against unauthorized disclosure.

17 “(2) The term ‘communicates’ means to impart,
18 transfer, publish, or otherwise make available.

19 “(3) The term ‘authorized’, when used in relation
20 to the possession, receipt, or control of classified infor-
21 mation, means with legal authority to have access to,
22 to possess, to receive, or to control such information.

23 “(4) The term ‘lawfully classified’, when used in
24 relation to classified information, means—

1 “(A) in the case of information classified on
2 or after the effective date of this title, that such
3 information—

4 “(i) is specifically authorized under the
5 criteria established by section 504 to be clas-
6 sified;

7 “(ii) is in fact properly classified and
8 identified in accordance with the criteria es-
9 tablished by sections 504 and 505 and regu-
10 lations issued under section 507; and

11 “(iii) was classified by an official author-
12 ized under section 503 to make such a clas-
13 sification;

14 “(B) in the case of information classified
15 before the effective date of this title, that such in-
16 formation—

17 “(i) is specifically authorized under cri-
18 teria established by an Executive order to be
19 protected from unauthorized disclosure in the
20 interest of the national security;

21 “(ii) is in fact properly classified under
22 the criteria and procedures established by
23 such Executive order; and

1 “(iii) was classified by a person author-
2 ized by statute, Executive order, or regula-
3 tion to make such a classification; and.

4 “(C) in the case of information designated as
5 information which (i) was furnished to the United
6 States by a foreign government or international
7 organization, and (ii) was designated by such for-
8 eign government or international organization as
9 requiring protection against unauthorized disclo-
10 sure, that such information was in fact furnished
11 to the United States by a foreign government or
12 international organization and was in fact desig-
13 nated by such foreign government or international
14 organization as requiring protection from unau-
15 thorized disclosure.

16 “PENALTY FOR IMPROPER CLASSIFICATION

17 “SEC. 510. Whoever classifies information in order to
18 conceal incompetence, inefficiency, wrongdoing, or adminis-
19 trative error, to avoid embarrassment to any individual or
20 agency, to restrain competition or independent initiative, or
21 to prevent or delay for any reason the release of information
22 which does not bear directly on the effectiveness of the na-
23 tional defense or the conduct of foreign relations shall be
24 fined not more than \$1,000 or imprisoned not more than one
25 year, or both.

1 "DEFINITIONS

2 "SEC. 511. For purposes of this title:

3 "(1) The term 'national security information'
4 means information and material that is owned by, pro-
5 duced for or by, or under the control of the United
6 States Government and that requires protection against
7 unauthorized disclosure for reasons of the national se-
8 curity.

9 "(2) The term 'national security' means the na-
10 tional defense or foreign relations of the United States.

11 "(3) The term 'information' includes material con-
12 taining information.

13 "(4) The term 'agency' means any executive de-
14 partment, military department, Government corpora-
15 tion, Government-controlled corporation, or other es-
16 tablishment in the executive branch of the Government
17 (including the Executive Office of the President), or
18 any independent regulatory agency."

19 (b) The table of contents at the beginning of the Nation-
20 al Security Act of 1947 is amended by adding at the end
21 thereof the following:

"TITLE V—CLASSIFICATION AND SAFEGUARDING OF NATIONAL SECURITY
INFORMATION

"Sec. 501. Purpose.

"Sec. 502. Authority for classification of national security information.

"Sec. 503. Officials with authority to classify national security information.

"Sec. 504. Standards for classification.

"Sec. 505. Identification of classified material.

"Sec. 506. Declassification policy and regulations.

"Sec. 507. Implementing regulations; standards.

"Sec. 508. Material covered by the Atomic Energy Act of 1954.

"Sec. 509. Unauthorized disclosure of classified information.

"Sec. 510. Penalty for improper classification.

"Sec. 511. Definitions."

1 SEC. 2. The amendments made by the first section of
2 this Act shall take effect at the end of the ninety-day period
3 beginning on the date of the enactment of this Act.

○